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MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS MN 55402-0903

**COPY MAILED**

**DEC 20 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Matz et al. :  
Application No. 10/037,005 : DECISION GRANTING PETITION  
Filed: December 21, 2001 : UNDER 37 CFR 1.137(b)  
Attorney Docket No. 36968/267872 :

This is a decision on the petition, filed August 23, 2004,<sup>1</sup> and again on October 18, 2004,<sup>2</sup> which is being treated as a petition under 37 CFR 1.137(b) to revive the present nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the present nonprovisional application is the subject of an application filed in an 18 month publication country on December 16, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

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<sup>1</sup>The petition filed on August 23, 2004, was submitted by the law firm of Kilpatrick Stockton LLP.

<sup>2</sup>The second petition filed on October 18, 2004, was submitted by Scott P. Zimmerman.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The present petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. 122(b)(2)(B)(i) has been rescinded. A Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing, which sets forth the projected publication date of March 31, 2005, accompanies this decision on petition.

The Office notes that the current address of record is Merchant & Gould PC, P.O. Box 2903, Minneapolis, MN 55402-0903. On April 4, 2004, Scott P. Zimmerman submitted a request to change the correspondence address. The Office records do not indicate that Mr. Zimmerman has power of attorney in this application. Accordingly, the correspondence address cannot be made of record. If Mr. Zimmerman desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision will be mailed to the law firm of Kilpatrick & Stockton and Mr. Zimmerman. However, all future correspondence will be directed to Merchant & Gould at the address of record until such time as appropriate instructions are received to the contrary.

The Office finance records indicate that the petition fee was paid twice. The second petition fee submitted on October 18, 2004, is not necessary. Therefore, petitioner may request a

refund of the \$1,370.00 petition fee by writing to the following address:

Mail Stop 16  
Director of the US Patent and Trademark Office  
PO Box 1450  
Alexandria, VA 22313-1450

A copy of this decision should accompany petitioner's request.

This matter is being referred to Technology Center Art Unit 2611.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3211.

*Christina L. Donnell*

Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Communication Regarding Rescission of Nonpublication  
Request and/or Notice of Foreign Filing

cc: Scott P. Zimmerman  
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